

Issue: Group I Written Notice (disruptive, unprofessional behavior); Hearing Date: 06/09/11; Decision Issued: 06/28/11; Agency: VPI&SU; AHO: Lorin A. Costanzo, Esq.; Case No. 9603; Outcome: No Relief – Agency Upheld.

**COMMONWEALTH OF VIRGINIA
VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY**

DECISION OF HEARING OFFICER

In the matter of: Grievance Case No. 9603

Hearing Date: June 09, 2011
Decision Issued: June 28, 2011

PROCEDURAL HISTORY

On February 22, 2011 Grievant was issued a Group I Written Notice for *Disruptive Behavior* (Offense Date: 2/17/11). The Written Notice indicated under *Nature of Offense and Evidence*:

On 2/17/2011, following the issuance of a counseling memo, [Grievant] came into my office to discuss the counseling memo. During the discussion he raised his voice, became so loud that a co-worker who was working with a customer had to vacate the area. He was also waving his arms and shaking the counseling memo at me. [Grievant] has been warned verbally on 11/9/10, 12/7, 12/9, and 12/21/10; and in writing on 11/10/2010, 12/7/2010, 1/3/2011, and 2/17/2011 regarding his inappropriate, insubordinate, and disruptive behavior. ...¹

On March 2, 2011, Grievant timely filed a *Grievance Form A*. to challenge (a.) the *Group I Written Notice* issued on February 22, 2011 and (b.) the issuance of the *2/17/11 Counseling Memorandum*.² Matters proceeded through the resolution steps and when the parties failed to resolve the grievance, Grievant requested that both the issuance of the Group I Written Notice and the issuance of the 2/17/11 Counseling Memorandum be qualified for hearing.

On April 21, 2011 the agency head qualified for hearing the Group I Written Notice issued on February 22, 2011. The agency head did not qualify for hearing the issuance of the counseling memorandum on February 17, 2011.³

The Department of Employment Dispute Resolution assigned this matter to the Hearing Officer effective May 25, 2011. Hearing was held on the matter of the Group I Written Notice issued 2/22/11. Hearing was held, with Grievant present, on June 9, 2011 beginning at 10:00 A.M. at Conference Room 325, Burruss Hall, Virginia Polytechnic Institute and State University, Blacksburg, VA. The hearing was originally set for Conference Room 312, Burruss Hall, but was moved to Conference Room 325, Burruss Hall, due to construction.

APPEARANCES

Agency Presenter
Agency Party Representative (who was also a witness)

¹ Agency Exhibits Tab A, "Written Notice".

² Grievant Exhibits Tab 1, Agency Exhibits Tab C.

³ Agency Exhibits Tab C.

Estimator
Grievant (who was also a witness)

ISSUES

Whether the issuance of a Group I Written Notice to Grievant was warranted and appropriate under the circumstances?

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. A preponderance of the evidence is evidence which shows that what is intended to be proved is more likely than not; evidence that is more convincing than the opposing evidence.⁴

FINDINGS OF FACT

After reviewing the evidence admitted and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

01. Grievant is employed by Agency as a "Prepress Technician" and has been so employed since 2/7/2007.⁵

02. Grievant's Supervisor has a cubicle/work area in a room containing the cubicles/work areas of other Agency employees.⁶

03. Grievant had received an unacceptable performance evaluation and was on a 90 day re-evaluation with meetings held every two weeks with his supervisor. These meetings were to provide feedback sessions to identify areas of needed improvement and provide a time to work together on how to improve performance.⁷

04. As a result of a meeting with Supervisor on or about November 10, 2010, Grievant received an e-mail from Supervisor addressing concerns of Supervisor as to Grievant raising his voice and other matters. The e-mail indicated, in part:

This was a pretty stressful meeting because I was dealing with allegations from you that you were being railroaded out of a job and that some of the entries were stupid. Raised voices never make it easy to follow through with a meeting. As always, I will work with and welcome discussions regarding any questions you may have.⁸

⁴ Dept. of Employment Dispute Resolution, *Grievance Procedure Manual*, Sections 5.8 and 9.

⁵ Grievant Exhibits "Original appointment-Classified" and "Report of Appointment or Change of Status".

⁶ Testimony.

⁷ Agency Exhibits Tab F. and testimony.

⁸ Agency Exhibits Tab D.

05. On December 7, 2010 Supervisor sent Grievant an e-mail setting forth Supervisor's concerns about Grievant's behavior and which indicated, in pertinent part:

I appreciate that we were able to discuss the items. I did not appreciate the sarcastic accusations and demands to bring all the job jackets with me. As always, I will work with and welcome discussion regarding any questions you may have.⁹

06. On December 9, 2010 Agency management, other than Supervisor, met with Grievant to discuss a 12/1/10 e-mail he sent to Supervisor and the 12/7/10 meeting he had with Supervisor. Management expressed concern as to Grievant's behavior at work. Grievant was informed by management that his behavior was not appropriate for an employee/supervisor relationship and would not be tolerated. Agency management also informed Grievant that a *Counseling Memorandum* would be issued to him regarding his behavior and the expectation for appropriate behavior in the workplace.¹⁰

07. On January 3, 2011 Supervisor gave a "*Counseling Memorandum*" to Grievant. This *Counseling Memorandum* expressed concerns that Grievant was exhibiting unprofessional behavior in the workplace. This *Counseling Memorandum* noted Agency concerns that:

On December 1, 2010 Grievant sent an e-mail to Supervisor that was inappropriate and disrespectfully in tone.

On December 7, 2010 during his performance feedback session Grievant's behavior was inappropriate, loud, disruptive and disrespectful.¹¹

08. The January 3, 2011 a *Counseling Memorandum* stated, in writing, Agency concerns as to Grievant's behavior on the job, set forth Agency expectations, and provided notice to Grievant that a failure to act in a professional manner will be subject to formal disciplinary action. The *Counseling Memorandum* indicated:

Our workplace expectations are that you will be professional in all interactions with, staff, clients and supervisors. This includes using a respectful tone of voice, no loud outbursts, no demonstrations/actions of anger such as slamming down materials, rushing in and out of an office in an angry manner. etc. and that e-mails are professional and reflect a respectful tone at all times. If you feel yourself getting upset with something being said or reviewed with you, then you may indicate that you need a few moments to collect your thoughts and ask to be excused.

Future, failure to act in a professional manner will be subject to formal disciplinary action up to and including suspension and/or separation of employment. Please let me know if you have any questions regarding this memo.¹²

09. On February 17, 2011 Grievant was issued a *Counseling Memorandum* by Supervisor addressing concern with Grievant's failure to follow instructions, his inappropriate interpersonal behavior with supervisor, and the inappropriate use of University time.¹³

⁹ Agency Exhibits Tab E.

¹⁰ Agency Exhibits Tab F.

¹¹ Agency Exhibits Tab F.

¹² Agency Exhibits Tab F

¹³ Agency Exhibits Tab F., Grievant Exhibits Tab 1.

10. On March 28, 2011, after Grievant having grieved matters concerning the 2/17/11 *Counseling Memorandum*, the Second Step Response directed that the reference to "Inappropriate use of University time" be removed by his Supervisor from the *Counseling Memorandum* but the matters of "Failure to follow instructions" and "Inappropriate interpersonal behavior with supervisor" remained in the *Counseling Memorandum*.¹⁴

11. The 2/17/11 *Counseling Memo* indicated, among other matters, that any future inappropriate interpersonal behavior with supervisor would be subject to formal disciplinary action up to and including suspension and/or separation of employment.¹⁵

12. On February 17, 2011, after receiving the 2/17/11 *Counseling Memorandum*, Grievant went to the cubicle/work area of Supervisor. Supervisor's cubicle/work area was one cubicle in a room with a number of other Agency employees' cubicles/work areas.¹⁶

13. At the time Grievant went into Supervisor's cubicle/work area on 2/17/11 a customer was in another cubicle located in the same room as Supervisor's cubicle discussing a printing job with Estimator.

14. In Supervisor's cubicle/work area on 2/17/11 Grievant raised his voice a manner which gave Supervisor and Estimator strong concern. Both Supervisor and Estimator were concerned over the behavior of Grievant.

15. Due to Grievant raising his voice in an unprofessional manner in Supervisor's cubicle/work area on 2/17/11 Estimator felt compelled to and did escort the customer out of the room which contained Estimator's and Supervisor's cubicle/work space. Estimator took the customer to the front lobby.¹⁷

APPLICABLE LAW AND OPINION:

The General Assembly enacted the Virginia Personnel Act, Va. Code § 2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth of Virginia. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging, and training state employees. It also provides for a grievance procedure. Code of Virginia, §2.2-3000 (A) sets forth the Virginia grievance procedure and provides, in part:

"It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employee disputes which may arise between state agencies and those employees who have access to the procedure under §2.2-3001."

To establish procedures on Standards of Conduct and Performance for employees pursuant to §2.2-1201 of the Code of Virginia, the Department of Human Resource Management ("DHRM") promulgated the *Standards of Conduct, Policy No. 1.60, effective April*

¹⁴ Grievant Exhibits Tab 1, Memorandum of 3/28/11.

¹⁵ Agency Exhibits Tab F.

¹⁶ Grievant Exhibits Tab 1.

¹⁷ Agency Exhibits Tab G and testimony.

16, 2008. The *Standards of Conduct* provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The *Standards of Conduct* serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct, and to provide appropriate corrective action.

Section B. 2. of Policy No. 1.60, "Standards of Conduct" effective April 16, 2008, provides, "To assist management in the assessment of the appropriate correction action, offenses are organized into three groups according to the severity of the misconduct or behavior."

Group I Offenses generally includes offenses that have a relatively minor impact on agency business operations but still require management intervention. This level is appropriate for repeated acts of minor misconduct or for first offenses that have a relatively minor impact on business operations but still require formal intervention.

Attachment A. of Policy 1.60 indicates that the normal disciplinary action for a Group I Offense is:

First Offense: Typically, counseling is appropriate although an agency has the discretion to issue a Group I Written Notice.

For Repeated Violations of the Same Offense: An Agency may issue a Group II Written Notice (and suspend without pay for up to ten workdays) if the employee has an active Group I Written Notice for the **same offense** in his/her personnel file.¹⁸

The *Standards of Conduct* provides that the examples of offenses set forth therein are not all-inclusive, but are intended as examples of conduct for which specific disciplinary actions may be warranted. Section B. 2. of Policy No. 1.60, "*Standards of Conduct*" provides:

*Examples of offenses, by group, are presented in Attachment A. These examples are not all-inclusive, but are intended as examples of conduct for which specific disciplinary actions may be warranted. Accordingly, any offense **not specifically enumerated**, that in the judgment of agency heads or their designees undermines the effectiveness of agencies' activities, may be considered unacceptable and treated in a manner consistent with the provisions of this section.*

Note: Under certain circumstances an offense typically associated with one offense category may be elevated to a higher level offense. Agencies may consider any unique impact that a particular offense has on the agency and the fact that the potential consequences of the performance or misconduct substantially exceeded agency norms. Refer to Attachment A for specific guidance.¹⁹

Policy 5616

Virginia Polytechnic Institute and State University has promulgated Policy and

¹⁸ Agency Exhibits Tab I,

¹⁹ Agency Exhibits Tab I, Policy No. 1.60 "Standards of Conduct".

Procedures No. 5616 (Rev.: 3, Date: December 13, 2010) Subject: Campus and Workplace Violence Prevention Policy ("Policy No. 5616"). This policy states:

It is the intent of Virginia Polytechnic Institute and State University to provide a safe and secure environment for University employees, students, and visitors by establishing preventive measures and providing assistance and support to victims.

Policy No. 5616 provides that the Agency does not tolerate acts of violence committed by or against employees, students, and others. Section 2.1 of Policy No. 5616 provides that the definition of "Violence" includes intimidation.

The definition of "Violence" in Policy No. 5616 includes threatening behavior, or verbal abuse occurring on university facilities or campuses by employees. Furthermore, "Violence" includes intimidating presence and harassment of any nature such as shouting or swearing. "Intimidation" includes engaging in behaviors intended to frighten, coerce, or induce duress.²⁰

"Prohibited conduct" under Policy No. 5616 includes intentionally engaging in verbal or physical behavior that subjects an identifiable individual to extreme emotional distress. Furthermore, verbal behavior also includes use of any method of communication.²¹

A violation of Policy No. 5616 is considered unacceptable conduct and subject to the disciplinary actions under the appropriate faculty, staff, and student policies, up to and including dismissal.²²

Behavior on 2/17/11

On 2/17/11, after receiving a written *Counseling Memorandum* from Supervisor, Grievant went from his cubicle, which was in another room, to his Supervisor's cubicle/work area to address the *Counseling Memorandum with Supervisor*. Grievant came right in, was pacing, holding the memo up. He was angry at matters contained in the memo and expressed his feelings in an angry tone and a loud voice in his confrontation with Supervisor. The Supervisor's work area/cubicle was in a room containing other employee cubicles

Grievant became very loud and was raising his voice in Supervisor's cubicle/work space. A co-worker, Estimator, was discussing a printing job with a customer in another cubicle in the room when this incident occurred. Estimator became so concerned with Grievant's behavior that he felt compelled to take the customer out of the situation and left room taking the customer to the lobby to finish discussing her printing job.

Estimator sent an E-mail concerning the events of 2/17/ 2011 to Supervisor which stated he had a customer in his workspace requesting quotes, "...and I had to take her to the front lobby due to [Grievant] raising his voice in an unprofessional manner in [Supervisor's] work space. I was embarrassed for my customer."²³

Grievant stated in writing concerning the 2/17/11 incident that:

²⁰ Agency Exhibits Tab J. Policy 5616, Section 4, "Definitions".

²¹ Agency Exhibits Tab J. Policy 5616, section 2.1.

²² Agency Exhibits Tab J. Policy 5616, section 2.1.

²³ Testimony and Agency Exhibits Tab G.

I did not shake the memo at her, I was holding it and showing her what I was talking about. I was not waving my arms around; I make gestures with my hands when I speak, most people do. I did not realize I was loud. I do not think I was inappropriate: I was upset that I received a memo that accuse me of wasting university time, inappropriate in a interpersonal behavior and failure to follow instructions.²⁴

Grievant testified concerning the incident. He testified he did not feel he was disruptive but could have been more professional. Supervisor testified that, on February 17, 2011, after she gave the *Counseling Memo* to Grievant she went back to her work area. Subsequently, Grievant came into Supervisor's work area and was angry, pacing, holding the letter up, and loud.

At the time Grievant entered Supervisor's cubicle/work area Estimator was meeting with a customer in a cubicle/work area in the same room in which Supervisor was located. Estimator and customer heard Grievant in Supervisor's area. Estimator testified hearing Grievant fussing, having an elevated voice, and being unprofessional. He described there being a confrontation and Grievant being loud and unprofessional. Estimator noted that the customer looked at him while this was going on and he felt it was his duty to take the customer out of the room. They went to the front lobby and finished the discussion about the job.

Estimator believed matters were disruptive enough that the customer might respond to his supervisor if he didn't remove her from the situation. Estimator had heard Grievant being upset with things a number of times. Estimator testified that Grievant was loud and sounded upset. He felt Grievant's actions were disruptive and he was embarrassed for his customer.

The evidence indicates that Grievant's behavior was disruptive to the business of Agency.

Prior Concerns Expressed

Management had previously expressed their concerns a number of times over Grievant's behavior in the workplace. Management had met with Grievant discussing behavior and Grievant had received verbal and written warnings concerning his behavior on the job including the following:

- On or about November 10, 2010 Supervisor sent Grievant an e-mail concerning a meeting they had. Supervisor expressing concern in the e-mail that, "Raised voices never make it easy to follow through with a meeting." She additionally raised concern as to certain allegations he made during their meeting.²⁵
- On December 7, 2010 Supervisor sent Grievant an e-mail stating her concerns as to Grievant's "sarcastic accusations" and demands which occurred in a meeting Grievant had with Supervisor.²⁶

²⁴ Grievant Exhibits Tab 2.

²⁵ Agency Exhibits Tab D.

²⁶ Agency Exhibits Tab E.

- On December 9, 2010, management (other than Grievant's immediate supervisor) met with Grievant to discuss a 12/1/10 e-mail Grievant had sent to Supervisor and to discuss the 12/7/10 meeting Grievant had with Supervisor. Management expressed concern as to Grievant's behavior at work. Grievant was informed his behavior was not appropriate for an employee/supervisor relationship and would not be tolerated.²⁷
- On January 3, 2011 a *Counseling Memorandum* was issued to Grievant stating agency concerns as to Grievant's behavior on the job and his unprofessional behavior in the workplace. Expectations were set forth by management and Grievant was notified that a failure to act in a professional manner will be subject to formal disciplinary action.²⁸
- On February 17, 2011 Grievant was issued a *Counseling Memorandum*. As discussed herein, Supervisor expressed concern with the Grievant's inappropriate interpersonal behavior with supervisor in this memorandum.²⁹

Also, Grievant admitted into evidence a "Notice of Improvement Needed, Unsatisfactory Performance" issued him on 11/18/09. The "Description of specific performance deficiencies and improvements needed" indicated:

"... Finally, [Grievant] needs to be able to interact appropriately with others in our fast-paced and dead-line driven environment."

Prior Warnings

Grievant had been informed prior to the incident of February 17, 2011 that management was very concerned as to his work behavior. He was given expectations for his behavior and he was informed that future inappropriate behavior at work could result in formal disciplinary action.

The January 3, 2011 *Counseling Memo* issued to Grievant specifically stated:

Our workplace expectations are that you will be professional in all interactions with, staff, clients and supervisors. This includes using a respectful tone of voice, no loud outbursts, no demonstrations/actions of anger such as slamming down materials, rushing in and out of an office in an angry manner. etc. and that e-mails are professional and reflect a respectful tone at all times. If you feel yourself getting upset with something being said or reviewed with you, then you may indicate that you need a few moments to collect your thoughts and ask to be excused.

²⁷ Agency Exhibits Tab F.

²⁸ Agency Exhibits Tab F.

²⁹ Agency Exhibits Tab F., Grievant Exhibits Tab 1.

Future, failure to act in a professional manner will be subject to formal disciplinary action up to and including suspension and/or separation of employment. Please let me know if you have any questions regarding this memo.³⁰

The 2/17/11 *Counseling Memo* issued to Grievant, which Grievant addressed with Supervisor, and which gave rise to behavior cited in the Group I Written Notice itself provided a warning notice to Grievant concerning his behavior. This *Counseling Memo* notified Grievant specifically that any future inappropriate interpersonal behavior with supervisor would be subject to formal disciplinary action up to and including suspension and/or separation of employment.³¹

Opportunity to Respond:

Policy Number 1.60, Section E. provides for an advance notice of discipline to employees prior to the issuance of a written notice and that the employee must be given oral or written notification of the offense, an explanation of the agency's evidence in support of the charge, and a reasonable opportunity to respond.

Supervisor and Grievant met prior to issuance of the Group I Written Notice to discuss matters and Grievant was provided an opportunity to orally present matters. The evidence indicates that, prior to the issuance of the Group I Written Notice, Grievant was given oral notification of the offense, an explanation of the agency's evidence in support of the charge, and a reasonable opportunity to respond and present mitigating factors or denial of the charge

Harassment, and/or Hostile Work Environment:

Grievant contends that Agency created a hostile work environment.³² Harassment/hostile work environment refers to any unwelcome, verbal, written or physical conduct that denigrates or shows hostility or aversion towards a person on the basis of race, sex, color, national origin, religion, sexual orientation, age, veteran status, political affiliation, or disability, that (1) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (2) has the purpose or effect of unreasonably interfering with an employee's work performance; or (3) affects an employee's employment opportunities or compensation.

To establish a claim for hostile work environment or harassment, Grievant must show that the Agency's conduct was (1.) unwelcomed, (2.) based upon a protected status or prior protected activity (3.) sufficiently severe or pervasive so as to alter her conditions of employment and to create an abusive or hostile work environment, and (4) imputable on some factual basis to the agency.³³ Whether an environment is "hostile" or "abuse" can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.³⁴

³⁰ Agency Exhibits Tab F

³¹ Agency Exhibits Tab F.

³² Grievant Exhibits Tab 1 and 2.

³³ See generally *White vs. BFI Waste Services, LLC*, 375 F.3d 288, 296-7 (4th Cir. 2004).

³⁴ *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23 (1993).

There is no evidence presented at hearing to find that the actions by Agency were based upon or were a pretext for discrimination based upon Grievant having membership in a protected class or based upon Grievant having engaged in a prior protected activity. There is insufficient evidence presented at hearing to find disparate treatment, harassment, or that a hostile work environment was created.

Mitigation:

§ 2.2-3005.1 of the Code of Virginia authorizes hearing officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action". § 2.2-3005 of the Code of Virginia charges the hearing officer with considering evidence in mitigation or aggravation of any offense charged by an agency in accordance with the rules established by the Department of Dispute Resolution.³⁵

§ VI.B.1. of the Department of Employment Dispute Resolution *Rules for Conducting Grievance Hearings* provides,

Mitigating and Aggravating Circumstances: The *Standards of Conduct* allows agencies to reduce the disciplinary action if there are "mitigating circumstances," such as conditions that would compel a reduction in the disciplinary action to promote the interests of fairness and objectivity; or . . . an employee's long service, or otherwise satisfactory work performance." A hearing officer must give deference to the agency's consideration and assessment of any mitigating and aggravating circumstances. Thus, a hearing officer may mitigate the agency's discipline only if, under the record evidence, the agency's discipline exceeds the limits of reasonableness.

The evidence indicates that Agency gave consideration to mitigating and aggravating circumstances. Agency took into consideration Grievant's work history and the prior oral and written warnings.

Based upon the evidence in this cause, the issuance of a Group I Written Notice does not exceed the limits of reasonableness.

Review De Novo

The hearing officer is charged with determining whether the agency has proved by a preponderance of the evidence that the disciplinary action was warranted and appropriate under the circumstances. To do this, the hearing officer reviews the facts de novo (afresh and independently, as if no determinations had yet been made) to determine:

- (i) whether the employee engaged in the behavior described in the Written Notice;
- (ii) whether the behavior constituted misconduct,
- (iii) whether the agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense) and, finally,
- (iv) whether there were mitigating circumstances justifying a reduction or removal

³⁵ § 2.2-3005 of the Code of Virginia.

of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances.

Furthermore, in reviewing any agency-imposed discipline, the hearing officer must give due consideration to management's right to exercise its good faith business judgment in employee matters, and the agency's right to manage its operation.³⁶

CONCLUSION

For the reasons stated above, based upon the evidence presented at hearing, Agency has proven, by a preponderance of the evidence, that:

1. Grievant engaged in the behavior described in the Written Notice.
2. The behavior constituted misconduct.
3. The Agency's discipline was consistent with law and policy.
4. There are not mitigating circumstances justifying a reduction or removal of the disciplinary action.

Furthermore, Agency has proven by a preponderance of the evidence that the disciplinary action of issuing a Group I Written Notice was warranted and appropriate under the circumstances and Agency's discipline does not exceed the limits of reasonableness.

DECISION

For the reasons stated above, the Agency's issuance to Grievant of a Group I Written Notice is **UPHELD**.

APPEAL RIGHTS

As the Grievance Procedure Manual sets forth in more detail, this hearing decision is subject to administrative and judicial review. Once the administrative review phase has concluded, the hearing decision becomes final and is subject to judicial review.

Administrative Review: This decision is subject to three types of administrative review, depending upon the nature of the alleged defect of the decision:

1. A request to reconsider a decision or reopen a hearing is made to the hearing officer. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions are the basis for such a request.

2. A challenge that the hearing decision is inconsistent with state policy or Agency policy is made to the Director of the Department of Human Resources Management. This request must cite to a particular mandate in state or Agency policy. The Director's authority is limited to ordering the hearing officer to revise the decision to conform it to written policy. Requests should be sent to:

³⁶ Section VI.B. of the Department of Employment Dispute Resolution, Rules for Conducting Grievance Hearings.

Director, Department of Human Resources Management
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219

3. A challenge that the hearing decision does not comply with grievance procedure is made to the Director of EDR. This request must state the specific requirement of the grievance procedure with which the decision is not in compliance. The Director's authority is limited to ordering the hearing officer to revise the decision so that it complies with the grievance procedure. Requests should be sent to:

Director, Department of Employment Dispute Resolution
600 East Main St., Suite 301
Richmond, VA 23219.

A party may make more than one type of request for review. All requests for review must be made in writing, and received by the administrative reviewer, within **15 calendar days** of the date of the original hearing decision. (Note: the 15-day period, in which the appeal must occur, begins with the date of issuance of the decision, not receipt of the decision. However, the date the decision is rendered does not count as one of the 15 day following the issuance of the decision is the first of the 15 days.) A copy of each appeal must be provided to the other party.

A hearing officer's original decision becomes a **final hearing decision**, with no further possibility of an administrative review, when:

1. The 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
2. All timely requests for administrative review have been decided and, if Ordered by EDR or DHRM, the hearing officer has issued a revised decision.

Judicial Review of Final Hearing Decision: Within **thirty days** of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. You must give a copy of your notice of appeal to the Director of the Department of Employment Dispute Resolution. The agency shall request and receive prior approval of the Director before filing a notice of appeal.

/s/

Lorin A. Costanzo, Hearing Officer